Supreme Court, U. S.
FILED
DEC 29 1980
MICHAEL RODAK, JR., CLERK

No. 80-883 (Hartzell)
No. 80-848 (Piper)
IN THE

Supreme Court of the United States

October Term, 1980

HARTZELL PROPELLER, INC., a Corporation,
and
PIPER AIRCRAFT COMPANY, a Corporation,
Petitioners,

vs.

GAYNELL REYNO, as Personal Representative of the Estates of William Fehilly, Liam Stewart Fehilly, William James McDougall Storm, David Vincent Moran and Peter Cunningham Scott,
Respondent.

Opposition to Petitions for Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

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Question Presented.

Was the decision of the United States Court of Appeals for the Third Circuit prejudicial to Petitioners and disruptive of federal law, such that this Court must intervene to reverse that decision?

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Statement of the Case.

On July 27, 1976, a Piper Model TA-23 aircraft crashed near Talla, Scotland. There were no witnesses to the aircrash itself and all aboard were killed on impact. Although some inconsistencies remain regarding the cause of the aircrash, it has become clear that prior to the crash an engine and resulting propeller malfunction occurred. Plaintiff below, the personal representative of the heirs of the deceased passengers on the plane, has therefore asserted various claims

arising out of the crash based on strict products liability and negligence against the defendants.

The defendants herein are both incorporated and conduct business almost exclusively within the United States. The aircraft which crashed was manufactured in the United States, and the plaintiff was before the honorable courts of the State of Pennsylvania precisely because of defendants' prior insistence, in the context of formal motions, that said state represents the most appropriate forum for the resolution of this dispute.

The initial action for damages was filed in 1977 in the Los Angeles, California Superior Court. Subsequently, defendant PIPER AIRCRAFT COMPANY and another defendant, later dismissed, (AVCO LYCOMING ENGINE GROUP), filed a Petition for Removal to the United States District Court of the Central District of California. That petition was granted.

Petitioner HARTZELL thereafter filed a Motion to Dismiss for lack of in personam jurisdiction and for a transfer pursuant to 28 U.S.C. §1404(a) to the Court of Pennsylvania. In September 1977, Petitioner PIPER filed a Motion to Dismiss for failure to state a claim upon which relief may be granted and to strike the plaintiff's claim for punitive damages.

In November, 1977, a motion was filed by PIPER for transfer under 28 U.S.C. §1404(a) to the United States District Court for the Eastern District of Pennsylvania. The request to transfer the case to the *Eastern* District was subsequently discovered to be inadvertent and when the court granted the motion to transfer, the Order stated that the matter was actually to be taken in the *Middle* District of Pennsylvania.

The action was then commenced for a third time in Pennsylvania. There followed motions by Petitioner HARTZELL for dismissal on the ground of forum non conveniens, and by Petitioner PIPER for Judgment on the Pleadings or for Summary Judgment.

On October 19, 1979, the Court, after lengthy filings from all parties pursuant to the above motions, ordered the action dismissed on the ground of forum non conveniens, conditioned upon defendants' submission to the jurisdiction of the courts of Scotland, and their waiver of any statute of limitations defense in that country.

Subsequently, plaintiff REYNO appealed from the judgment of the District Court to the United States Court of Appeals for the Third Circuit. On July 24, 1980, that Court reversed the District Court, and on August 27, 1980, denied HARTZELL's Petition for a rehearing *en banc*. Thereafter, both HARTZELL and PIPER filed the within Petitions for Writs of Certiorari.[1]

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[1]Respondent herein, for the convenience of the Court and the parties, responds to both petitions with this single opposition.

ARGUMENT.

A thorough reading of both of the petitions submitted herein indicates that Petitioners have too narrowly construed the opinion of the U.S. Court of Appeals for the Third Circuit, so as to lend to it an interpretation which revolves solely around the issues of the prospective result of the application of one forum's law over another and the plaintiff's choice of forum.

Respondent respectfully submits that the analysis made by the Court of Appeals was pervasive and thorough, and clearly not limited to the two factors which Petitioners have elected to bring to the attention of this Court.

> WAS THE DECISION OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT PREJUDICIAL TO PETITIONERS AND DISRUPTIVE OF FEDERAL LAW, SUCH THAT THIS COURT MUST INTERVENE TO REVERSE THAT DECISION?

Petitioners have demonstrated an overriding concern with the proposition that the Court of Appeals placed undue emphasis on the less favorable aspects of Scottish liability laws as they would apply in this matter, as opposed to the more liberal American law of products liability which would be applied in the U.S. District Court in Pennsylvania. The Court of Appeals reversed the District Court and held that a dismissal by the American court would result in a change of applicable law, the very prospect of such a change and its consequences thereby precluding dismissal. The court noted as follows:

> Even under the district court's choice of law analysis . . . it is apparent that the dismissal would work a change in the applicable law so that the plaintiff's strict liability claim would be eliminated from the case. But this Court has held that a dismissal for forum non

> conveniens, like a statutory transfer, should not, despite its convenience, result in a change in the applicable law. Only when American law is not applicable, or when the foreign jurisdiction would, as a matter of its own choice of law, give the plaintiff the benefit of the claim to which she is entitled here, would dismissal be justified.[2]

This holding was initially enunciated in *DeMateos v. Texaco, Inc.*[3] which reflected the landmark decision of *Van Dusen v. Barrack*[4] by this Court that a transfer under 28 U.S.C. §1404(a) should not work a change in applicable law as determined by the transferor court.

The *DeMateos* court held that the "principle is no less applicable to a dismissal on forum non conveniens grounds."[5]

Summarily, and without any support whatsoever for its contention, Petitioner HARTZELL stated in footnote 25 at page 7 of its Petition that "[t]he stance taken in *DeMateos* is the result of misapplication of the principle of *Van Dusen v. Barrack*". This conclusion is unwarranted, especially in view of the fact that *Van Dusen* took up the matter of prejudice to a plaintiff, and held that the ruling of the District Court below

> assumed that transfer to a more convenient forum may be granted on a defendant's motion even though that transfer would seriously prejudice the plaintiff's legal claim.[6]

The *Van Dusen* decision also went on to state:

> Although in the present case the contentions concern rules relating to capacity to sue and damages, in other

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[2]*Reyno v. Piper Aircraft Co.*, 630 F.2d at 163-164 (3d Cir. 1980).
[3]562 F.2d 895, 899 (3d Cir. 1977), cert. den. 435 U.S. 904 (1978).
[4]376 U.S. 612, 626-43 (1964).
[5]562 F.2d at 899.
[6]376 U.S. at 627.

> Although in the present case the contentions concern rules relating to capacity to sue and damages, in other cases the transferee forum might have a shorter statute of limitations or might refuse to adjudicate a claim which would have been actionable in the transferor State. In such cases a defendant's motion to transfer would be tantamount to a motion to dismiss.[7]

This Court concluded that the potential prejudice to the plaintiff therein was so substantial as to require review of the assumption that a change in state law is permissible under a 28 U.S.C. §1404(a) transfer, stating that

> There is nothing . . . in the language or policy of §1404(a) to justify its use by defendants to defeat the advantages accruing to plaintiffs who have chosen a forum which, although it was inconvenient, was a proper venue.[8]

Both Petitioners contend that *DeMateos*, in addition to being a misapplication of federal law as enunciated by this Court, also conflicts sorely with the position on this issue of the Court of Appeals for the Second Circuit, and rely on *Fitzgerald v. Texaco, Inc.*[9] in support thereof. Petitioners' reliance is misplaced.

Fitzgerald concerned a maritime collision off the Dover Straits of England. The only connection with the U.S. in this matter was that a Delaware corporation (Texaco, Inc.) owned all of the stock of the foreign company which owned (but did not manage) the vessel, and was also the thrice removed owner of the foreign company (TOT) which managed the vessel.[10] Other than such a tenuous link with America, this case had absolutely no connection with the United States courts, and the Court therein was justified in

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[7]376 U.S. at 629-30.
[8]376 U.S. at 633-34.
[9]521 F.2d 448 (2d Cir. 1975), cert. den. 423 U.S. 1052 (1976).
[10]This lineage is obtained from *DeMateos v. Texaco, Inc.*, 562 F.2d 895 (3d Cir. 1977).

holding that England was by far the more convenient forum. The decisive factors were far more compelling in that case than in the present one, including the fact that there were witnesses to the collision itself, and those witnesses resided in England.

In addition, not one individual resident of the United States could be shown to have any responsibility for the events surrounding the collision. In the present case, antithetically, there has been posited by plaintiff strict liability on the part of two domestic corporations, with no intervening causative organizations or individuals. Therefore, all the witnesses and documentary evidence relating to the plaintiff's claims reside in the United States and near the Pennsylvania forum. These include witnesses and documents on the design, manufacture, testing, certification and approval of the aircraft. Petitioners' therefore, have asserted a conflict which Respondent submits does not really exist, since it might be hypothetically assumed that the Second Circuit, given the extensive contacts between the matter extant and the United States, would resolve the question in the same manner as the Third Circuit. Rhetorical though the question may at present be, the fact of the extensive analysis by the Third Circuit panel remains to discredit the conflict between the Circuits as alleged by Petitioners, and Petitioners have completely neglected the extensive balancing of factors undertaken and completed herein by the Third Circuit Court. Furthermore, this Court has to date declined to comment on such an alleged discrepancy between the Circuits[11] without the resulting confusion of federal law which Petitioners so strenuously fear.

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[11]Certiorari was denied in *DeMateos v. Texaco, Inc.* at 435 U.S. 904 (1978); Certiorari was previously denied in *Fitzgerald v. Texaco, Inc.* at 423 U.S. 1052 (1976).

Petitioners also expressed grave concern over the purportedly undue weight given by the Third Circuit to the plaintiff's choice of a forum, one of the factors enumerated in *Gulf Oil Corp. v. Gilbert*[12] to be weighed by courts faced with forum non conveniens dismissal issues.

It must be reiterated at the outset that this concern on the part of Petitioners reflects a narrow interpretation of the actual balancing of many factors carried out by the Court of Appeals. The Court's opinion clearly demonstrates an almost overly thorough analysis of every single element outlined in the *Gilbert* case,[13] and Petitioners' respective analyses have unnecessarily and unjustifiably narrowed the parameters of the forum non coveniens doctrine.

It is well established that a plaintiff's choice of forum, given proper venue, is rarely to be disturbed in the absence of a compelling showing that a defendant, by being taken to trial in that forum, will be vexed, harassed, and subject to such undue burden so as to violate all notions of fairness in the trial process.[14]

Further, after the balancing process is carried out pursuant to *Gilbert*, the trial court must find the result more than merely leaning in favor of the defendant; such result must be strongly in favor thereof. In the absence of such an outcome, the plaintiff's choice of forum is not to be disturbed,[15] and both Petitioners have failed to demonstrate that the balance is strongly in their favor or that they would suffer undue hardship and prejudice if put to trial in the United States. Rather, as Respondent maintained before the

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[12]330 U.S. 501 (1947).

[13]*Reyno v. Piper Aircraft Co.*, 630 F.2d at 159-171. It should be noted that pp. 163-171 primarily concern the Court's choice of law discussion.

[14]*Koster v. Lumbermens Mutual Casualty Co.*, 330 U.S. 518 (1947).

[15]330 U.S. at 508.

Court of Appeals, Petitioners would merely have this Court exchange the convenience of Respondent in the prosecution of this matter for that of their own, all the while ignoring the major contacts between the accident herein and the site of the tortious conduct by Petitioners.

Respondent would also respectfully remind this Court that not only has the U.S. been chosen as a forum by her, but it was previously strenuously argued by Petitioners in California as a convenient forum as well.[16]

Further, the inescapable fact remains that both Petitioners reside and do business almost exclusively in the United States, and cases were cited by the Third Circuit in support of the proposition that suit brought in a forum which not only represents the plaintiff's choice, but also the residence of the defendant, weighs heavily against dismissal.[17]

In *Top Form Mills v. Sociedad Nationale Ind., Etc.*,[18] the Court was faced with much the same situation as the one extant, the party seeking a forum non conveniens dismissal urging that trial would more suitably be held in Italy. The court rejected this contention, noting:

> The fact that witnesses located in Italy may have to be called here to testify at some expense and inconvenience similarly does not compel dismissal. Trial in Italy would require [the responding party] to shoulder the equally onerous burden of transporting its witnesses to that country . . . and [re Italian witnesses] if necessary examination in Italy by letters rogatory may be possible.[19]

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[16]*Reyno v. Piper*, 630 F.2d at 156.

[17]*Ibid.*, at 12, citing *Schertenleib v. Fraum*, 589 F.2d 1156, 1164 (2d Cir. 1978); Hoffman v. Goberman, 420 F.2d 423, 426-27 (3d Cir. 1970).

[18]428 F.Supp. 1237 (S.D.N.Y. 1977).

[19]428 F.Supp. at 1253. See also *Thomson v. Palmieri*, 355 F.2d 64, 66 (2d Cir. 1966).

Finally, with respect to nearly every other *Gilbert* factor, it may be seen that the balance was carefully considered by the Court of Appeals and found to lean heavily in favor of Respondent herein. Petitioners below failed to meet the substantial respective burdens required of them to show that the relevant factors of convenience weigh clearly in their favor.[20] For Petitioners now to assert that the Court of Appeals inappropriately limited its consideration to that singular factor dealing with the weight to be given the plaintiff's choice of a forum, represents an erroneous circumscription of the Court of Appeals' decision.

Conclusion.

Because of the assertion of a false conflict by Petitioners, and because of the narrow construction given by them to the decision of the Third Circuit, Respondent respectfully prays that the within Petitions for Writs of Certiorari be denied.

Respectfully submitted,

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[20] *Data General Corp. v. Skinner*, 438 F.Supp. 901 (Del. 1977); *National Super Spuds, Inc. v. New York Mercantile Exchange*, 425 F.Supp. 665 (D.C.N.Y. 1977); *First Nat. City Bank v. Nanz, Inc.*, 437 F.Supp. 184 (D.C.N.Y. 1975).